

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL YOUNG,

Plaintiff,

v.

OPINION AND ORDER

13-cv-517-wmc

THE PER MAR SECURITY SERVICES,
JIM FLATER, and LUCAS LAST NAME
UNKNOWN,

Defendants.

Plaintiff Michael Young alleges that Per Mar Security Services, its general manager Jim Flater, and a security guard Lucas (last name unknown) violated his constitutional rights by threatening to remove him from the city bus terminal. Plaintiff asked for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, and the court concluded that plaintiff was unable to prepay the fee for filing this lawsuit. (Dkt. #3.) The next step is determining whether any of plaintiff's proposed claims (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). For the reasons that follow, the court will deny plaintiff leave to proceed.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening order, the court assumes the following, potentially material facts based on the allegations in Young's complaint:

- On July 16, 2013, a security guard named Lucas employed with Per Mar Security Services approached Young and “told him that he was standing his ground,” “that he was packing heat,” “that he better watch out,” and “that he was going to call his supervisor and have him kicked off the property” of the city bus terminal.
- On July 18, 2013, a “white veteran” told Young that Lucas intended to frame him for stalking two white females.
- Per Mar Security Services General Manager Jim Flater is responsible for the unlawful conduct of this security guard.

OPINION

As explained in other opinions by this court addressing Young’s voluminous claims, he can only assert a constitutional challenge pursuant to 42 U.S.C. § 1983 against a defendant who has acted under color of state law. Here, the named defendants are a private security service and its employees. Private individuals *may* be held liable under § 1983 if two conditions are satisfied. “First, the alleged deprivation of federal rights must have been caused by the exercise of a right or privilege created by the state, a rule of conduct imposed by the state, or someone for whom the state is responsible.” *London v. RBS Citizens, N.A.*, 600 F.3d 742, 746 (7th Cir. 2010) (citing *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999)). “Second, the private party must be a person who may fairly be said to be a state actor.” *London*, 600 F.3d at 746 (citing *Am. Mfrs.*, 526 U.S. at 50). Absent evidence that the security guards here exercised police power, it is unlikely that defendants would be subject to liability under § 1983. *See Payton v. Rush-Presbyterian-St. Luke’s Med. Ctr.*, 184 F.3d 623, 628 (7th Cir. 1999).

Even if defendants were acting under color of state law, Young must also allege an underlying constitutional violation. A security guard’s statement threatening to have

Young removed from the property and hearsay statements that this same guard was intending to frame him simply do not give rise to a violation under the United States Constitution. Accordingly, the court will deny Young leave to proceed and dismiss his complaint.

ORDER

IT IS ORDERED that:

- 1) plaintiff Michael Young's motion for leave to proceed is DENIED;
- 2) plaintiff's claims are dismissed; and
- 3) plaintiff's request for assistance in recruiting counsel is DENIED as moot.

Entered this 2nd day of December, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge